

MINUTES OF THE 154TH MEETING OF THE
WATER MANAGEMENT BOARD
RADISSON HOTEL
455 MT. RUSHMORE RD.
RAPID CITY, SOUTH DAKOTA

APRIL 2-3, 2008

CONTINUATION OF PUBLIC HEARING: The Water Management Board continued the public hearing on Wednesday, April 2 & 3, 2008, at the Radisson Hotel, Angostura/Deerfield Room, 455 Mt. Rushmore Road, Rapid City, SD.

Chairman Jim Hutmacher opened the public hearing at 8:30 a.m. MDT.

Board Members in Attendance: Jim Hutmacher, Francis Brink, Rodney Freeman, Bernita Loucks, and Tim Bjork. Everett Hoyt attended on the second day of the hearing, but did not participate in voting on the proposed rules. Leo Holzbauer was absent.

DENR Staff in Attendance: Eric Gronlund, Water Rights Program; Bill Markley, Gary Haag, John Foster, and Tom Brandner, Groundwater Quality Program; Mike Cepak and Roberta Fivecoate, Minerals and Mining Program; Foster Sawyer, SD Geological Survey.

Attorney General's Office: Roxanne Giedd, Deputy Attorney General, and Jeff Hallem, Assistant Attorney General.

Others in Attendance: See attached attendance sheets.

Notice of the public hearing was published in the following seven newspapers: Black Hills Pioneer on March 17, 2008, Hot Springs Star on March 18, 2008, Brookings Register, Custer County Chronicle and Edgemont Herald-Tribune on March 19, 2008, and Rapid City Journal on March 21, 2008. Affidavits of Publication are on file at DENR. The notice was also published in the Pierre Capital Journal, but the Affidavit of Publication has not yet been received.

Public notice was also mailed to 197 interested persons and e-mailed to the Nuclear Regulator Commission and U.S. Environmental Protection Agency (EPA) Region VIII. The proposed revisions were also posted on DENR's website.

The purpose of the hearing was to obtain additional comments and information to further consider the proposed amendments of rules numbered 74:55:01:01 to 74:55:01:61 inclusive.

The board held a public hearing on March 12, 2008, to consider adoption of proposed amendments. At the hearing the board had several questions related to the proposed amendments and felt it best to continue the hearing to allow the Department of Environment and Natural Resources staff to research those questions. The board also decided to move the continued hearing location to Rapid City to allow other interested parties to attend.

These rules establish the minimum state requirements that an operator of a Class III underground injection control well must meet. A Class III well is a well that is used to inject fluids for extraction of minerals, including solution mining of minerals. This process is typically called in-situ mining and is the process currently used by mining companies in other western states for the extraction of uranium.

The rules have been in place since 1981 when the Water Management Board first adopted them. Since adoption, there has never been a Class III well proposed to be constructed and operated in South Dakota. However, recent interest in uranium deposits in western South Dakota has led to exploration efforts to further define those deposits. If economical uranium deposits are found, it is likely those companies will submit the necessary applications to mine the deposits. Therefore, DENR felt it necessary to update and strengthen these rules in anticipation of a company submitting an application to mine in South Dakota. The amendments include more comprehensive requirements for the permit application, well construction, well mechanical integrity testing, plugging of wells and drill holes, baseline water quality sampling, remedial action, ground water restoration and post-closure activities.

The reason for adopting the proposed rule amendments is for human health and safety, and the protection of the environment, ground water resources, and other natural resources from the impacts of Class III underground injection control mining operations. Adoption of the rules does not allow a company to operate an in-situ mine in South Dakota. It must first obtain the necessary permit established under these rules. In addition to the state Class III underground injection control permit established under these proposed rules, an operator of an in-situ mine in South Dakota would also need to obtain a state mining permit, a federal Class III underground injection control permit, a license issued by the U.S. Nuclear Regulatory Commission, and other state and federal environmental permits depending upon the operation. If these rules are not adopted, the U.S. Environmental Protection Agency would be the sole agency responsible for issuing a Class III underground injection control permit.

Roxanne Giedd, Deputy Attorney General, presented the legal framework for adopting the proposed rules. She also presented the board with a proposed amendment to 74:55:01:61 – Financial Assurance Guaranteeing the Performance of Corrective Actions (DENR's Proposed Amendment A).

Dr. Foster Sawyer, SD Geological Survey, offered a presentation on the general geology and hydrology of the Black Hills region.

Mike Cepak, Engineering Director with DENR's Mining Program, presented information on the in-situ mining process.

Gary Haag, Senior Hydrologist with DENR's Ground Water Quality Program, described the Class III well rules covering what is in the permit application, the steps taken in the event there is a problem with the injection process, and the final restoration actions after mining is complete.

Mr. Haag reported that due to concerns raised by the public and the board members at the March 12 hearing, DENR no longer proposed to repeal the sections in the rules dealing with the contested case procedure.

Also at the March 12 hearing, public comments were received regarding the public's ability to review documents and receive updates associated with an operating in-situ leach mine. Mr. Haag stated that DENR will provide on its website quarterly updates on the operational status, compliance status, technical revisions submitted or approved, and other pertinent information regarding an active in-situ leach mine.

Bill Markley, administrator of the DENR Ground Water Quality Program, presented the department's response to verbal comments received on March 12, 2008, from Bruce Ellison. He also presented the department's response to written comments received on March 12, 2008, from the Defenders of the Black Hills/Dr. Brandon Brygider. Mr. Markley discussed the changes that DENR proposed in response to these comments.

Mr. Haag presented for the Board's consideration DENR's proposed amendments to the rules, including the following:

LRC Comments on Style and Form (DENR's Proposed Amendment B);

DENR Corrections to Definitions and Other Changes (DENR's Proposed Amendment C);

DENR Response to Powertech's comments made during the March 12, 2008, hearing (DENR's Proposed Amendment D);

DENR Response to EPA's comments made during a March 5, 2008, conference call (DENR's Proposed Amendment E); and

Changes to Rules based on comments from DENR, Bruce Ellison, and Dr. Brandon Brygider/Defenders of the Black Hills (DENR's Proposed Amendment F).

The board recessed for lunch.

Following the break, Chairman Hutmacher noted that the board received written comments from Shirley Frederick, Black Hills Sierra Club, Rapid City, SD, and Robert J. Ghost Bear, Sioux Falls, SD.

Chairman Hutmacher requested public comments from the audience. The following offered comments:

Shirley Frederick, Black Hills Sierra Club, Rapid City, SD

Jim Turner, Mayor, Edgemont, SD

Tom Davis, Belle Fourche, SD

Charmaine White Face, Defenders of the Black Hills, Rapid City, SD (also offered handout on Radioactive Decay Chain of Uranium 238, Historical Aquifer Levels, graph, and Tennessee Valley Authority report)

Gary Heckenliable, Action for the Environment, Rapid City, SD

Lilias Jarding, Ft. Collins, CO (also offered handout on Wyoming In-Situ Leach Uranium Mines Violating State Law)

Carole Boos, Edgemont, SD

Marvin Kammerer, Rapid City, SD

Mary Jo Farrington, Rapid City, SD

Nancy Hilding, Prairie Hills Audubon Society, Black Hawk, SD

Marsha Dunsmore, Rapid City, SD

Marvin Bishop, Hermosa, SD

Debra White Plume, Manderson, SD

Mark Tubbs, Edgemont, SD
Bruce Ellison, Rapid City, SD
Gene Tyon, Rapid City, SD
John Putnam, Dewey, SD
Mike Ortner, Hot Springs, SD
Mark Hollenbeck, Edgemont, SD
Wilma Tope, Belle Fourche, SD

This concluded public testimony on the proposed rules.

Jeff Hallem requested that the department provide the board with written responses regarding the public testimony given today.

Chairman Hutmacher declared a recess until the following morning.

Chairman Hutmacher opened the hearing at 8:30 a.m. on April 3, 2008.

Roxanne Giedd, Deputy Attorney General, generally addressed some of the comments received on the previous day of the hearing.

Ms. Giedd then presented the board with proposed changes in response to public testimony received the previous day (DENR's Proposed Amendment G).

Following Ms. Giedd's presentation, Everett Hoyt suggested that at a future date the board consider amendments to its bonding rules.

Rodney Freeman thanked the department for the effort put forth in proposing amendments to the rules and addressing public concerns. He also thanked the public for participating in this process. Mr. Freeman said it is obvious that the board is not able to adopt rules that will satisfy everyone, but the board tries to do the best it can. He noted that the decision to mine uranium was made by the Legislature, not the Water Management Board. The Water Management Board is charged with making in-situ mining as safe as possible without contradicting the Legislature's directive and intent. Mr. Freeman said he believes the board and staff have tried to address the concerns of the public, and the board can only do what the Legislature has authorized it to do.

The other board members indicated that they agreed with Mr. Freeman.

Chairman Hutmacher requested board action.

Motion by Freeman, seconded by Brink, to adopt DENR's Proposed Amendment A. Motion carried. Hoyt abstained from voting.

Motion by Freeman, seconded by Bjork, to adopt DENR's Proposed Amendment B. Motion carried. Hoyt abstained from voting.

Motion by Freeman, seconded by Loucks, to adopt DENR's Proposed Amendment C. Motion carried. Hoyt abstained from voting.

Motion by Freeman, seconded by Brink, to adopt DENR's Proposed Amendment D. Motion carried. Hoyt abstained from voting.

Motion by Freeman, seconded by Bjork, to adopt DENR's Proposed Amendment E. Motion carried. Hoyt abstained from voting.

Motion by Freeman, seconded by Bjork, to adopt DENR's Proposed Amendment F. Motion carried. Hoyt abstained from voting.

Motion by Freeman, seconded by Brink, to adopt DENR's Proposed Amendment G to supersede DENR's Proposed Amendment F, as appropriate, and with the changes in 74:55:01:26.02 changing "department" to "secretary" in the three places indicated and with changes to correct the misspelling of "approved" and deleting the comma after "approved" in 74:55:01:60.06. Motion carried. Hoyt abstained from voting.

Motion by Freeman, seconded by Brink, to adopt ARSD 74:55:01:01 to 74:55:01:61, inclusive, as amended.

Mr. Bjork noted that he would not propose a change at this time, but in 74:55:01:01(8) he would like see "Best Available Technology" used rather than "Best Practicable Technology."

Mr. Bjork also asked if 74:55:01:24(2)(a) essentially precludes or authorizes the exemption of a particular section of an aquifer or an entire aquifer just because it can be mined?

Gary Haag answered that is language taken directly out of EPA's rules.

Mr. Hallem noted that there is an "and" between (1) and (2) so both (1) and (2) would have to be met.

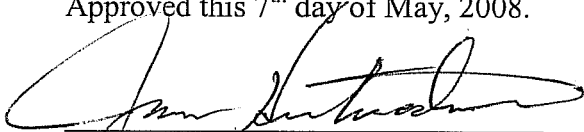
The motion carried. Hoyt abstained from voting.

The proposed rules and DENR's Proposed amendments A – G are attached to the minutes.

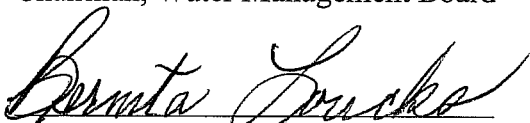
Chairman Hutmacher thanked all the participants and declared the hearing closed.

Motion by Brink, seconded Loucks, to adjourn. Motion carried.

Approved this 7th day of May, 2008.



Chairman, Water Management Board



Secretary, Water Management Board

ATTENDANCE SHEET

WATER MANAGEMENT BOARD
Radisson Hotel, 445 Mt. Rushmore Road
Rapid City, South Dakota
April 2-3, 2008

DO YOU WISH
TO TESTIFY?

CITY & STATE

MAILING ADDRESS

NAME (PLEASE PRINT)

Ralph Speck	4430 S. Oak St.	Casper, Wyo	No
Max Main	618 State	Belle Fourch, SD	No
Richard Clement	8910 Adams St	Albuquerque NM	Yes
Richard Blubaugh	5525 DTC Parkway, #140, Greenwood Village CO	Greenwood Village CO	No
Jim Munro	5320 Normans Court Sd,	Rapid City SD	No
* Shirley Frederick	3411 Fallowfield Ct RC 5770	RC SD 57702	Yes
John Mates	2200 Market St #727 Denver CO 80205	Denver CO	No
Herol McBride	28097 Dewey Road	Edgemont, SD	NO NU
John McBride	28097 Dewey Road	Edgemont SD	No
* Jim Turner	P.O. Box 677	Edgemont SD	Yes
Bill Curran	Box 75	Edgemont SD	?
* Tom C Davis	11022 Davis Road	Belle Fourch	Yes
* Christine White Face	PO Box 2003, Rapid City,	Rapid City, SD	Yes

ATTENDANCE SHEET

WATER MANAGEMENT BOARD
Radisson Hotel, 445 Mt. Rushmore Road
Rapid City, South Dakota
April 2-3, 2008

NAME (PLEASE PRINT)

MAILING ADDRESS

CITY & STATE

DO YOU WISH
TO TESTIFY?

Vincent Brings Plenty

P.O. Box 2003

Rapid City, SD

No

Brenda Aplin

51 ST ANDREWS RD EYMOUTH

~~Carol~~

UK EXF 7AS

UK

BAH

Conry Heckenbible

P.O. Box 422

R.C.S.D.

Yes

~~Paula~~ Lambert

P.O. Box 78

Interior, S.D.

?

Tom & Gail Crane

P.O. Box 1100 ~~Atte~~

Hi-City SD

?

Dale Hagens

324 E 5th Ave

Miller SD

NO

~~Paula~~ Zepher

550 Melburn Rd Belle Fourche

Quincy, SD

~~Yes~~

Mary Falkenberg

665 Oak St

~~Tom~~ Falkenberg; 23 students

Edgemont High School

Edgemont, SD

No

Carol Boos

10169 Elk World Edgemont

Edgemont SD

Maybe

Imara Beard

Edgemont High School

Edgemont SD

No

Linda Tibball

Edgemont 801 Tott Ave

Edgemont SD

No

ATTENDANCE SHEET

3

WATER MANAGEMENT BOARD
Radisson Hotel, 445 Mt. Rushmore Road
Rapid City, South Dakota
April 2-3, 2008

<u>NAME (PLEASE PRINT)</u>	<u>MAILING ADDRESS</u>	<u>CITY & STATE</u>	<u>DO YOU WISH TO TESTIFY?</u>
Dean Aunard	2381 S. Plaza Dr	Re, SD 57702	
Stan Nichols	3305 W.S. STR	RC SD 57702	
Margaret Watters	6236 Blair Road	Re SD	
Robert W. Johnson	20099 Turkey Foot Ln.	Whitehead-57793	no
Steve Flanery	PO Box 2070	RC SD 57702	no
Lilia's Jarding, PhD	PO Box 2391 108 E. County St	FT. Collins, CO	Yes
- Nancy Klu	2014 Moose Dr	Sturgis, SD	Yes
RICHARD L FORT	11367 BLACK FOREST RD	LEAD, SD 57754	
MARVIN KAMMERER	22198 Elk Valley Rd. R.C. Meade Co.	R.C.	Yes
Charles Yellow Horse	PO Box #191 Allen SD 57714	Allen South Dakota	No
BOB PAULSON	822 MAIN ST. SUREA, RE, SD 57701	RC, SD 57701	NO

ATTENDANCE SHEET

WATER MANAGEMENT BOARD
Radisson Hotel, 445 Mt. Rushmore Road
Rapid City, South Dakota
April 2-3, 2008

NAME (PLEASE PRINT)	MAILING ADDRESS	CITY & STATE	DO YOU WISH TO TESTIFY?
Margaret Nechtogast	426 St Joe Rd	RC SD	No
SP HANSEN	3001 Denwood Ave N.	RC SD	No
Nancy Hild. - J	P.O. Box 788,	Black Hawk, SD	Yes
Marcia J. Sawamura	3936 Sunset Dr, RC SD	Rapid City, SD	Yes
Roy E. Mann, Kenzie Blue	27399 Dewey Rd	Edgemont SD.	?
Lean Kattas	821 Upper Pines	RC SD	No
Wilma Tope	RR1 Box 360	Belle Fourche, SD	No.
Tony King	330 Mt Rushmore Road	Custer, SD	No
Merwin Alfervess	PO Box 392	Hill City, SD	No
Laurette Brierley	4500 Reservoir Rd. RC SD, 03	OST Member/ Opponent	
Nicole Prairie Chicken	115 Holcomb Rd SO, 57001	Rapid City SD OST Member Opponent	
Geo B. Bean	10399 3-1 Rd	Belle Fourche, S.D.	
Margaret Bishop	14133 5th Hwy 36	TERmosa	Yes

ATTENDANCE SHEET

WATER MANAGEMENT BOARD
Radisson Hotel, 445 Mt. Rushmore Road
Rapid City, South Dakota
April 2-3, 2008

NAME (PLEASE PRINT)

MAILING ADDRESS

CITY & STATE

DO YOU WISH
TO TESTIFY?

* Debra White Plume

* Mark Tubbs

Carol Oberlin

* Bruce Ellison

Box 71

10891 River Road

1820 Summit RD

2265 Park Canyon RD RC

Manderson SD

Edgemont SD

Hot Springs

Rapid City

Yes

yes

yes

CITY & STATE

Yes

ATTENDANCE SHEET

WATER MANAGEMENT BOARD
Radisson Hotel, 445 Mt. Rushmore Road
Rapid City, South Dakota
April 2-3, 2008

NAME (PLEASE PRINT)

Mary Jo Farington

MAILING ADDRESS

823 St. Francis

CITY & STATE

Rapid City, SD

DO YOU WISH
TO TESTIFY?

Yes

ATTENDANCE SHEET

WATER MANAGEMENT BOARD
Radisson Hotel, 445 Mt. Rushmore Road
Rapid City, South Dakota
April 2-3, 2008

NAME (PLEASE PRINT)

* Nick H. Habelsch
* Hilma Lopez

MAILING ADDRESS

Ex 8R Edouard
Dele Fouchy

CITY & STATE

DO YOU WISH
TO TESTIFY?

✓
Yes